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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,875	04/13/2001	Harold Norbert Heller	29565/KC15,490	5544

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/834,875	Applicant(s) HELLER ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-47 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-47 and 49-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 31, 2005 has been entered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second fasteners being non-releasably secured to the front portion without penetrating the front portion must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendment filed May 31, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the applicant has amended the claim to recite that the first and second fasteners are non-releasably secured to the front portion without penetrating the front portion.

Applicant is required to cancel the new matter in the reply to this Office Action.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the applicant has amended the claim to recite that the first and second fasteners are non-releasably secured to the front portion without

penetrating the front portion. The term "penetrating" is not supported by the originally filed specification

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 41 – 47 and 49 – 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Takamitsu et al. (CA 2,096,672)

With reference to claim 41, Takamitsu et al. (hereinafter "Takamitsu") discloses a personal care absorbent article comprising a front portion including opposing first and second lateral side portions defining respective first and second lateral side edges (figure 1), and a central section defining a fastening area between the first and second lateral side portion (16), first and second fault lines (9b) being disposed between the fastening area and the respective first and second lateral side portions (figure 1), a rear portion including an outer rear edge (figure 2), the first and second fault lines being configured for activation to selectively release the front portion from the rear portion for use of the personal care absorbent article as a diaper-like article (page 3A); a crotch portion extending between the front portion and the rear portion (figure 6); first and second fasteners releasably secured to the fastening area (page 8, line 24 to page 9,

line 7) and non-releasably secured to the front portion without penetrating the front portion, the first and second fasteners being spaced apart from the first and second lateral side edges of the front portion and spaced axially apart from a waist opening and from respective leg openings (figures 3 – 4 and 6), the first and second fasteners being adjustable in the fastening area without activation of the first and second fault lines as set forth on page 9, line 17 to page 10, line 2.

The examiner notes that the first and second fasteners (5) are formed by application of adhesive or hook and loop material (similar to that of the claimed invention), therefore it can be reasonably assumed that the first and second fasteners will function identically to that of the claimed invention and also will not penetrate the front portion.

As to claim 42, Takamitsu discloses a personal care article wherein the fault lines are cut lines having no front portion material extending across the fault lines as set forth in figure 5.

With reference to claims 43 and 50 – 52, Takamitsu discloses the fault lines as lines of perforations, which may be considered as an array of apertures, material crushed in a line pattern or material that is breakably attached, as set forth on page 5, line 20.

With respect to claim 44, Takamitsu discloses the fasteners comprising hook-type fasteners engageable with loop material at the fastening area as set forth on pages 8, line 24 to page 9, line 7.

Regarding claim 45, Takamitsu discloses the first and second fasteners providing at least partial support of integrity of the front portion across the fault lines as set forth in figure 1.

With reference to claim 46, Takamitsu discloses a fastening area that comprises a separate and distinct patch of fastening material affixed to an underlying web as set forth on page 9, lines 13 – 16.

As to claim 47, Takamitsu discloses a fastening area that is integral with a front surface of the central section of the front portion as set forth in figure 4.

As to claim 49, Takamitsu discloses a personal care article wherein a floating portion of each fastener is disposed, from the respective fault line, inwardly toward a central portion of the front portion, and being unattached to the front portion inwardly of the respective fault line as set forth in figure 5.

Response to Arguments

Applicant's arguments filed May 31, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., flaps secured apart from side portions and the amount of layers to which the flaps are bonded) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 41 recites that the side flaps are non-releasably secured to the front portion spaced apart from first and second lateral side edges, not portions.

The applicant also provides arguments with respect to the flaps being bonded to three layers. These features, or lack thereof, are not recited in the rejected claims and therefore do not provide a patentable distinction between the claimed invention and the prior art rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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